Supreme Court, U.S.
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No. 99-1708

IN THE

Supreme Court of the United States

HILLCREST DEVELOPMENT,
a California Limited Partnership,

Petitioner,

v.

COUNTY OF RIVERSIDE, a Public Entity; R. WAYNE WATTS, Treasurer-Tax Collector of the County of Riverside; N.R.L.L., INC., a California Corporation; SPAN, L.L.C., a Limited Liability Company,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FOURTH DISTRICT, DIVISION TWO

BRIEF IN OPPOSITION FOR RESPONDENTS N.R.L.L., INC. AND SPAN, L.L.C.

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STATEMENT PURSUANT TO RULE 29.6

Neither corporate respondent has a parent company and no publicly held company owns 10% or more of the stock of either corporate respondent.

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STATEMENT OF FACTS

The petition on file herein fails to cite a number of facts which should be considered by the Court in considering the petition. As a result, respondents N.R.L.L., Inc. ("NRLL") and SPAN, L.L.C. ("SPAN") hereby submit this statement of facts pursuant to Rule 15.2 of the Rules of the Supreme Court.

In 1984, Hillcrest acquired the real property at issue ("the Property"). It paid the taxes on the Property only once, in 1988, when it paid and current delinquent taxes, interest and penalties.

From 1984 to 1993, Hillcrest relocated its operations on three separate occasions. On only one occasion did Hillcrest notify respondent R. Wayne Watts ("the Tax Collector") of its change of address, that being in 1989. When it relocated its operations for the last time in 1993, Hillcrest did not notify the Tax Collector of the change of address. On February 8, 1996, the Tax Collector sent notices of tax sale to Hillcrest, by certified mail, to all of Hillcrest's known addresses. Before sending the notices, the Tax Collector attempted without success, to find Hillcrest's address using County and Department of Motor Vehicle records and telephone directories in Riverside and Orange Counties.

On March 26, 1996, the Tax Collector sold the Property at auction to NRLL. On April 24, 1996, the tax deeds to NRLL were recorded. NRLL later conveyed the Property to SPAN.

On July 19, 1996, Nelson-Brown Equities, Inc., an asset search company, notified Hillcrest that it appeared to be

entitled to unclaimed assets worth approximately $83,000. Because Hillcrest was unable to identify the source of the funds on its own, it entered into a fee agreement with Nelson-Brown. In a letter dated October 15, 1996, Nelson-Brown disclosed to Hillcrest that: "The holder of the unclaimed funds is the County of Riverside. The form is in excess proceeds from the sale of [the Property]." As a result, within seven months of the sale of the property and 6 months of the tax deeds to NRLL, Hillcrest had actual knowledge the Property had been sold by the County in a tax sale. Nevertheless, Hillcrest waited for a year, filing the underlying action on October 14, 1997.

The petition, in the "Questions Presented for Review" section, implies that NRLL and SPAN participated "with the [County] and the [Tax Collector] in the deprivation of real property in violation of the due process clause." However, at no time did Hillcrest allege or present any evidence which would support a claim that NRLL and SPAN in any way participated in any of the conduct which Hillcrest contends was in violation of 42 U.S.C. § 1983. As alleged by Hillcrest, the only activity of NRLL and SPAN was the actual purchase of the subject property at the tax sale. No allegations were asserted, nor was any evidence presented, that NRLL and/or SPAN participated in the alleged activities of respondent County of Riverside ("County") and the Tax Collector. As a result, contrary to the description of Hillcrest of the questions presented for review, there is no allegation that NRLL and/or SPAN "participated" with the County and the Tax Collector in those acts which allegedly constituted a violation of section 1983.

REASONS FOR DENYING THE WRIT

Respondents NRLL and SPAN were named as defendants in the underlying action on causes of action for quiet title and declaratory relief. Petitioner Hillcrest also filed a claim under 42 U.S.C. § 1983 for civil rights violation. That cause of action did not include NRLL and SPAN as defendants. The sole question presented by the petition is whether Hillcrest had a valid claim for civil rights violation under section 1983 with respect to a tax sale conducted by respondent the County and the Tax Collector. As a result, as to NRLL and SPAN, there is no question which has been presented for review which in any way impacts the underlying decision in favor of NRLL and SPAN and against Hillcrest. In that regard, Hillcrest does not challenge that portion of the judgment entered in favor of NRLL and SPAN.

Moreover, even if Hillcrest had named NRLL and SPAN in the section 1983 cause of action, no valid claim under a civil rights theory existed against those private party defendants. To state a valid cause of action under section 1983, a plaintiff must show at least two elements. First, the plaintiff must show that the defendant may deprive the plaintiff of a right secured by the Constitution or the laws of the United States. Second, the plaintiff must prove that the defendant acted under color of state law. In the absence of one of these required elements, there is no claim for civil rights violation available against a private party, such as NRLL and SPAN. *Anderson v. Consol-Pennsylvania Coal Company*, 40 F. Supp. 1126, 1134 (1997).

Lastly, the decision of the California Court of Appeal (4th Appellate District, Division Two) was a correct and proper determination with respect of the availability of a section 1983 claim to set aside a tax sale. *Fair Assessment and Real Estate Association v. McNary*, 454 U.S. 100 (1981).

I.

THERE IS NO COMPELLING FEDERAL QUESTION PRESENTED BY THE PETITION

This petition challenges a decision from the California Court of Appeal which was not published. Pursuant to California Rules of Court, Rule 977, an opinion that is not ordered published shall not be cited or relied on by a court or a party in any other action or proceeding with the exception of certain limited situations not pertinent to this action. As a result, the issues addressed by the petition relate solely to the parties to this action and there is no compelling federal question which justifies the issuance of a writ of certiorari, as requested in the petition.

II.

THE POSITION ASSERTED BY HILLCREST, IF ACCEPTED, WOULD GREATLY INHIBIT THE ABILITY TO SELL REAL PROPERTY AT A TAX SALE

The position of Hillcrest, as asserted in its petition, is that a separate claim for civil rights violation under section 1983 should be made available to the owner of real property sold at a tax sale. Hillcrest has taken the position notwithstanding the fact that, pursuant to the provisions of the California Revenue and Taxation Code, adequate

remedies exist in state law to invalidate a tax sale. NRLL and SPAN submit that the position of Hillcrest, if accepted, would result in rendering tax sales perpetually subject to challenge.

California Revenue and Taxation Code sections 3691, et seq., provide a state law remedy to challenge the validity of a tax deed based on alleged invalidity or irregularity of any proceedings in conjunction therewith. In *Quelimane Company, Inc. v. Stewart Title Guaranty Co.*, 19 Cal. 4th 26 (1998), the California Supreme Court discussed the impact that the availability of a civil rights violation action would have upon the title industry. In *Quelimane*, the plaintiff attempted to seek relief from a title insurance company based upon its refusal to issue a title policy to a plaintiff that had purchased property at a tax sale. One of the arguments asserted by the title insurance company was that the business of a title company does not include research of the records of the tax assessor and delinquent tax sales of real property to assure that statutory procedures have been followed and proper notice given. As contended by the title insurance company, an adversely affected person might nonetheless challenge a tax deed on due process grounds, claiming inadequate notice. In dismissing this argument, the California Supreme Court in *Quelimane* stated as follows:

> It is doubtful that a meritorious due process challenge can be made on that basis. Since the state may fix a statute of limitations for the exercise of constitutional rights, it may set a reasonable limit for claims affecting the title of the property. [Citation.] As the high court observed in [*Saranac Land and Lumber Co. v. Roberts* (1990) 177 U.S. at 318]: "[A statute of

> limitations] will bar any right, however high the source from which it may be deduced, provided that a reasonable time is given a party to enforce his rights."

Quelimane, *supra*, 19 Cal. 4th at 54.

By state law, California has set a one year limitation period for challenges to a tax deed. Conversely, the statute of limitations on actions for alleged civil rights violation is controlled by California Code of Civil Procedure section 340, subdivision (3). The statute of limitations under that provision does not begin to run until discovery of the right to pursue the claim or facts sufficient to place a reasonable person on notice. As a result, the availability of a civil rights action to challenge a tax deed would result in a substantial period of uncertainty in which an action to invalidate a tax deed could be commenced.

III.

A SECTION 1983 CAUSE OF ACTION IS NOT AVAILABLE TO CHALLENGE STATE TAXATION

In *Fair Assessment and Real Estate Association v. McNary*, 454 U.S. 100 (1981), the plaintiffs filed a section 1983 action, alleging certain local real property reassessment practices violated equal protection and due process. Individual plaintiffs sought a refund and punitive damages and an organizational plaintiff sought an award of the expenses it had incurred in seeking more equitable assessments. *Id.* at 105-106.

The Supreme Court held

> taxpayers are barred by the principal of comity from asserting § 1983 actions against the validity of state tax systems in federal courts. Such taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete and may ultimately seek review of the state decision in this Court. [Citations]

Fair Assessment and Real Estate Association v. McNary, *supra*, at 116, n. omitted.

The Court in *Fair Assessment and Real Estate Association* concluded that comity barred an action for damages based on the alleged unconstitutionality of a state tax for two reasons. *Fair Assessment and Real Estate Association v. McNary*, *supra*, at 113-115. First, the recovery of damages under the Civil Rights Act first requires a declaration or determination of the unconstitutionality of a state tax scheme that would halt its operation. *Id.* at 115. "The district court must first enter a declaratory judgment . . . we are convinced that such a determination would be fully as 'intrusive as the equitable actions that are barred by principals of comity.' " *Id.* at 113, n. omitted.) Second, ". . . damages actions, no less than actions for an injunction, would hale state officers into federal court every time a taxpayer alleged the requisite elements of a section 1983 claim." *Id.* at 115. As concluded by the Court, allowing such actions would in every practical sense operate to suspend the collection of state taxes. *Id.* at 115.

The same result was reached in *National Private Truck Council, Inc. v. Oklahoma Tax Commission*, 515 U.S. 582 (1995), where the plaintiffs claimed a state tax on motor carriers violated both the commerce clause and the privileges and immunities clause. The plaintiff filed in state court, under both state law and section 1983. The state court held the tax unconstitutional, and awarded refunds; however, the state court refused to award any relief under section 1983. *Id.* at 585. In affirming the decision of the state court, the Supreme Court held that section 1983 does not call for either federal or state court to award injunctive and declaratory relief in state tax cases where an adequate legal remedy exists. *National Private Truck Council, Inc. v. Oklahoma Tax Commission, supra*, at 589. As concluded by the Court, whether a suit is brought under federal or state court, congress did not authorize the disruption of state tax administration by the bringing of section 1983 actions. *Id.* at 590.

Under the holdings in *Fair Assessment and Real Estate Association* and *National Private Truck Council, Inc.*, the decision of the Court of Appeal herein properly held that Hillcrest had no valid section 1983 claim against County and the Tax Collector.

CONCLUSION

For the reasons set forth herein, NRLL and SPAN respectfully submit that the requested review should be denied.

Respectfully submitted,

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